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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 353.

THE UNITED STATES, APPELLANT,

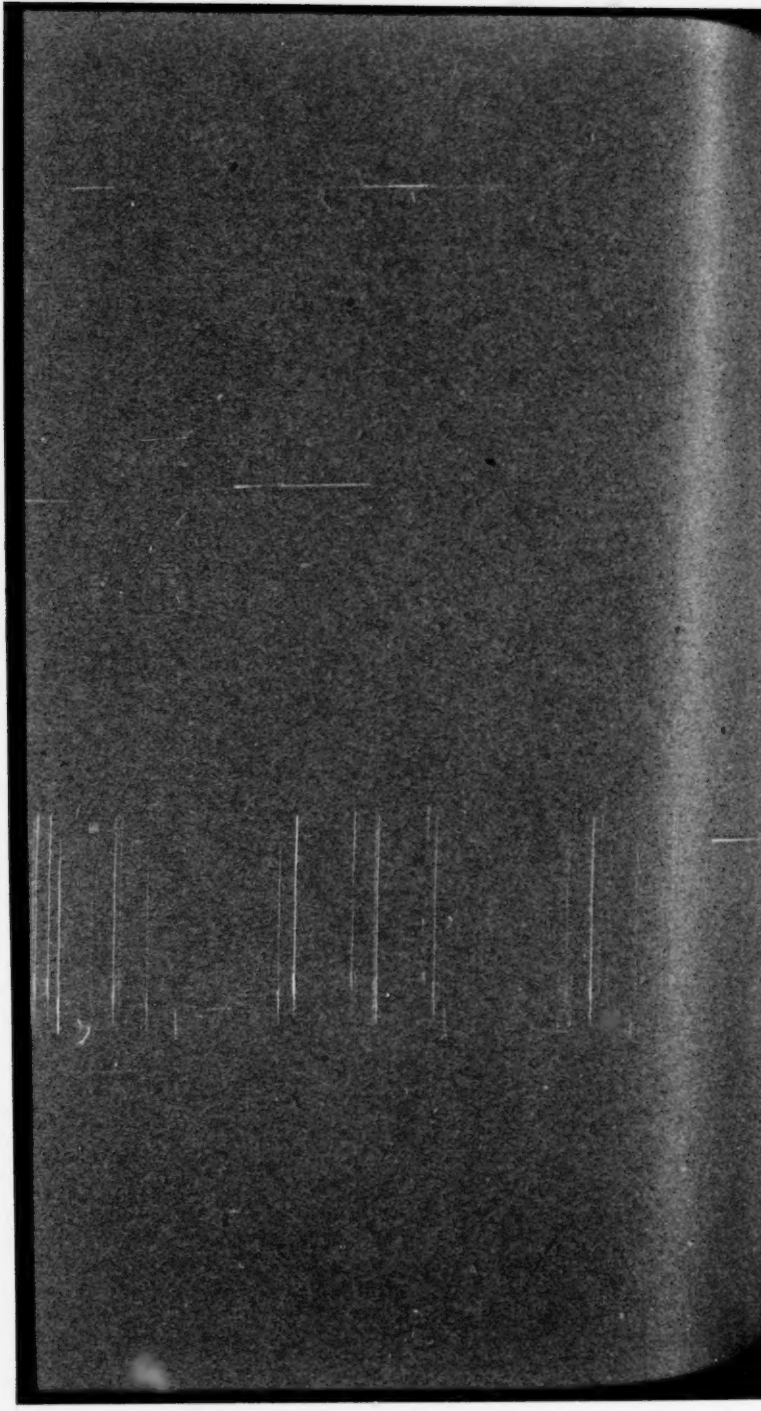
v.

WILLIAM EDMONSTON.

APPEAL FROM THE COURT OF CLAIMS.

FILED JULY 30, 1900.

(17,982.)



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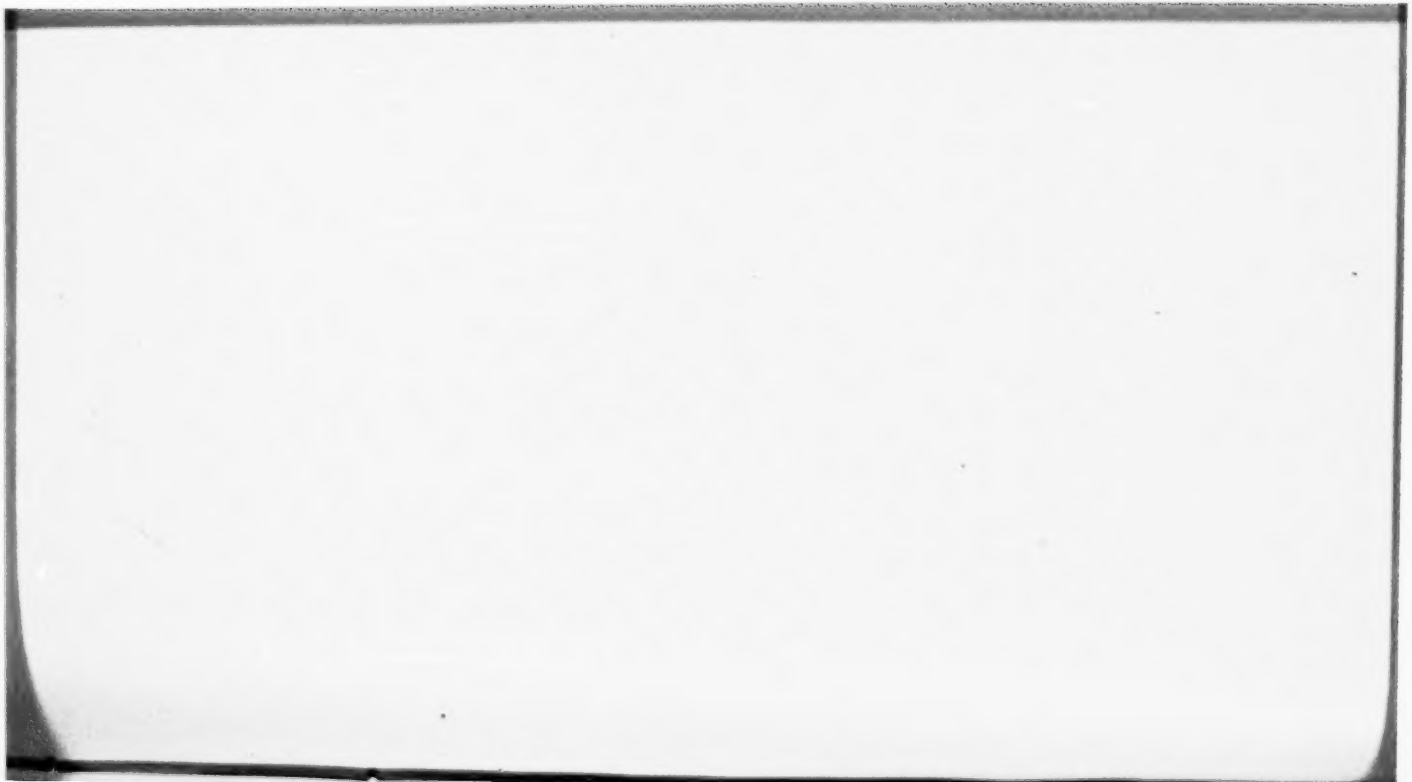

1 I.

Petition filed August 8, 1894.

In the Court of Claims, December term, 1893.

WILLIAM EDMONSTON AND OTHERS
v.
THE UNITED STATES. } No. 18556.

Petition.

The petition of the hereinafter-named claimants states that each of them is a citizen of the United States; that in the year hereinafter mentioned each of the claimants entered a tract of land at the Ashland land office, containing the number of acres hereinafter set forth, under the preemption or commutation provisions of the homestead laws, and that each of the said claimants was required by the register and receiver of the said land office and their superiors in office to pay, and that each of the said claimants did pay, under the compulsion of the said officers, the sum of $2.50 per acre for the land contained in his said entry.

The petition further states that the tract entered was subject to entry on the 15th day of June, 1880, and had been raised in price to $2.50 per acre, and put in the market at that price, on the 24th day of June, 1859, by reason of the grant of alternate sections for railroad purposes, and was reduced in price to one dollar and twenty-five cents per acre by the act of June 15, 1880 (21 Stat. L., 237), and was subject to entry by the claimant at the time entered upon payment of the said sum of $1.25 per acre.

The petition further states that the said receiver turned over to the defendant as part of the receipts of his said office the said sum of $2.50 per acre paid him by each of the claimants, and that the defend-
2 ant now retains and withholds and has not repaid the sum of $1.25 per acre belonging to the claimants, contrary to equity and good conscience. Wherefore each of the claimants prays judgment against the defendant in the sum hereinafter mentioned.

JAMES H. SPALDING,
EDWIN W. SPALDING,
Attorneys for the Claimants.

Name of claimant.	Number of acres entered.	Year of entry and amount for which judgment is asked.	
William Edmonston	160	1891	$200
William Edmonston	155.38	1891	194.22
Robert C. Hanna, admr. of Dan. Kennedy, dec'd	160	1889	200
Edward Brown	160	1890	200
Manus Brown	160	1890	200
Peter P. Colgoard	160	1891	200
Kate Wood	160	1889	200
Charles B. Bradford	160.58	1890	200.72
Swan Swanberg	80	1891	100
Jacob Fraseth	80	1893	100
John Spaulding	80	1891	100
Fred M. Milligan	40	1890	50
Samuel Peterson	40	Oct., 88	50

COUNTY OF WASHINGTON,
District of Columbia, ss:

Edwin W. Spalding, of said county, having been duly sworn, deposes and says that he is one of the attorneys for the above-named claimants; that no assignment of said claim or of any interest therein or part thereof has been made except as stated in the said petition; that the claimants are justly entitled to the amounts therein claimed from the United States, as deponent verily believes, exclusive of all offsets and just grounds of defense, and that the facts stated in the said petition are true.

EDWIN W. SPALDING,
Attorney for the Claimant.

Sworn to and subscribed before me this 8th day of August, 1894.
[SEAL.]

FRANK B. MARLOW,
Notary Public.

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II.

Traverse, filed June 4, 1900.

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant have at all times borne true faith and allegiance to the Government of the United States, and ha not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

L. A. PRADT,
Assistant Attorney-General.

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III.

Findings of fact and conclusions of law, filed June 4, 1900.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The claimant, at the land office at Ashland, Wisconsin, on March 11, 1891, filed his declaratory statement under the preemption laws No. 2174, declaring his intention to preempt the S. ½, S. E. ¼, and S. ½ of S. W. ¼ of sec. No. 12, in T. No. 44 N. of R. No. 13 W., which declaration was to expire on March 2, 1892; and on September 16, 1891, at the said land office the said declarant gave public notice by public advertisement, as required by law, of his intention to make final proof at the said land office on November 9, 1891, to establish his claim and right to the land described, and on November 9, 1891, by various witnesses, the claimant satisfied the register and receiver at the said land office that from about March 2, 1891, he had inhabited and improved the said land and had built a dwelling thereon.

II.

The claimant having established his right to the said land on November 11, 1891, was required to pay for the same to the United States the sum of $400, being at the rate of $2.50 per acre for 160 acres, and he did pay the United States that amount for the land.

III.

The land inhabited and improved by the claimant, and paid for by him on the 11th of November, 1891, had been raised in price to $2.50 per acre and put in the market prior to January, 1861, by reason of the grant of alternate sections to aid in the construction of railroads, and was of an alternate section reserved to the United States along the line of a railroad within the limits granted to the State of Wisconsin by the act approved June 3, 1866 (11 Stat. L., p. 20), to aid in the construction of railroads in that State, now known as the grant to the Chicago, St. Paul, Minneapolis and Omaha Railway Company, and it was never alternate reserved land to the United States along the line of railroads within the limits granted by any other act of Congress to any other railway company.

IV.

At the time said cash entry was made and said money paid to the receiver at the local land office at Ashland, Wisconsin, it does not appear that the claimant made any protest or objection to said payment, nor assert any right to purchase the land at a less price than that which he was called upon to pay for said land.

V.

Said land had been raised to $2.50 per acre and put on the market prior to January, 1861, by reason of the grant of alternate sections for railroad purposes, said land having been thus offered on June 14, 1856.

VI.

Application for repayment of one-half of the purchase money was made to the Commissioner of the General Land Office, and was refused, which said decision was affirmed by the Secretary of the Interior on March 19, 1895, upon the ground that this land was situated within the limits of a railway grant and that it was not a case where land was afterwards found not to be within the limits of a railroad grant, and was not a case which had been erroneously allowed and could not be confirmed within the meaning of those expressions as used in the act of June 16, 1880.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decide, as a conclusion of law, that the claimant recover judgment of and from the United States for the sum of two hundred dollars ($200).

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IV.

Final judgment.

At a Court of Claims held in the city of Washington, D. C., on the 4th day of June, A. D. 1900, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said William Edmonston do have and recover of and from the United States the sum of two hundred dollars ($200.00).

BY THE COURT.

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V.

Defendants' application for and allowance of appeal.

From the judgment rendered in the above-entitled cause on the 4th day of June, 1900, in favor of claimant, the defendants, by their Attorney-General, on the 11th day of June, 1900, make application for and give notice of an appeal to the Supreme Court of the United States.

L. A. PRADT,
Assistant Attorney-General.

Filed and allowed in open court June 11, 1900.

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VI.

In the Court of Claims.

WILLIAM EDMONSTON }
vs. } No. 18556.
THE UNITED STATES. }

I, Archibald Hopkins, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the judgment of the court, of the application of the defendants for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 17th day of July, 1900.

[SEAL.]

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

10 (Indorsed on cover:) File No., 17838. Court of Claims. Term No. 353. The United States, appellant, vs. William Edmonston. Filed July 19", 1900.

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